

1 MORGAN, LEWIS & BOCKIUS LLP  
2 Michael J. Lyons (State Bar No. 202284)  
3 Andrew J. Wu (State Bar No. 214442)  
4 Ryan L. Scher (State Bar. No. 244706)  
5 2 Palo Alto Square  
6 3000 El Camino Real, Suite 700  
7 Palo Alto, CA 94306-2122  
8 Tel: 650.843.4000  
9 Fax: 650.843.4001  
10 mlyons@morganlewis.com  
11 awu@morganlewis.com  
12 rscher@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP  
Daniel Johnson, Jr. (State Bar No. 57409)  
Amy M. Spicer (State Bar No. 188399)  
One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
Tel: 415.442.1000  
Fax: 415.442.1001  
[djjohnson@morganlewis.com](mailto:djjohnson@morganlewis.com)  
[aspicer@morganlewis.com](mailto:aspicer@morganlewis.com)

12  
13 Attorneys for Defendant and Counterclaimant  
PHILIPS LUMILEDS LIGHTING COMPANY, LLC

UNITED STATES DISTRICT COURT

**NORTHERN DISTRICT OF CALIFORNIA**

## OAKLAND DIVISION

17 EPISTAR CORPORATION,

Case No. C-07-5194 CW

18 Plaintiff, ¶

19 ||

20 PHILIPS LUMILEDS LIGHTING  
COMPANY, LLC,

Defendant.

23 || AND RELATED COUNTERCLAIMS

**DECLARATION OF RYAN SCHER IN  
SUPPORT OF MOTION BY PHILIPS  
LUMILEDS LIGHTING COMPANY, LLC  
FOR JUDGMENT ON THE PLEADINGS  
WITH RESPECT TO EPISTAR  
CORPORATION'S FIRST, THIRD, AND  
FOURTH CLAIMS REGARDING UNFAIR  
COMPETITION AND TORTIOUS  
INTERFERENCE (WITH EXHIBITS A-M)**

**EXHIBITS C, D, E, G, I, J, AND K  
SUBMITTED UNDER SEAL**

Date: July 10, 2008

Time: 2:00 p.m.

Location: Courtroom 2, 4th Floor

Judge: The Honorable Claudia Wilken

1 I, Ryan Scher, hereby declare as follows:

2 1. I am an attorney duly licensed and admitted to practice before this Court and an  
 3 associate at the law firm of Morgan, Lewis & Bockius LLP. I am one of the attorneys for  
 4 defendant and counterclaimant Philips Lumileds Lighting Company, LLC ("Lumileds"), in the  
 5 present action. I have personal knowledge of the facts stated herein, and if called and sworn as a  
 6 witness, I could testify competently thereto. I make this declaration in support of Lumileds'  
 7 motion for judgment on the pleadings.

8 2. Attached hereto as Exhibit A is a true and correct copy of the Complaint of  
 9 Lumileds Lighting U.S., LLC Under Section 337 of the Tariff Act of 1930, As Amended, filed on  
 10 November 4, 2005, in the International Trade Commission's ("ITC") investigation *In the Matter*  
 11 *of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv.  
 12 No. 337-TA-556.

13 3. Attached hereto as Exhibit B is a true and correct copy of the Limited Exclusion  
 14 Order, issued May 9, 2007, in the ITC's investigation *In the Matter of Certain High-Brightness*  
 15 *Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

16 4. Attached hereto as Exhibit C is a true and correct copy of Appellant Epistar  
 17 Corp.'s Motion to Stay Exclusion Order Pending Appeal, filed July 13, 2007, in the ITC's  
 18 investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products*  
 19 *Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains confidential information,***  
 20 ***subject to protective order.***

21 5. Attached hereto as Exhibit D is a true and correct copy of Appellant Epistar  
 22 Corp.'s Motion to Stay Exclusion Order Pending Appeal, filed July 13, 2007, in the action  
 23 *Epistar Corp. v. Int'l Trade Comm'n, et al.*, Fed. Cir. No. 2007-1457. ***This exhibit contains***  
 24 ***confidential information, subject to protective order.***

25 6. Attached hereto as Exhibit E is a true and correct copy of Exhibits N and P to  
 26 Appellant Epistar Corp.'s Motion to Stay Exclusion Order Pending Appeal, filed July 13, 2007, in  
 27 the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and*

1 *Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains confidential***  
 2 ***information, subject to protective order.***

3       7. Attached hereto as Exhibit F is a true and correct copy of the ITC's Order denying  
 4 Respondent's Motion to Stay Enforcement of Exclusion Order Pending Appeal, issued August  
 5 20, 2007, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting*  
 6 *Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

7       8. Attached hereto as Exhibit G is a true and correct copy of the Commission  
 8 Opinion on Denial of Motion to Stay, issued August 20, 2007, in the ITC's investigation *In the*  
 9 *Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC  
 10 Inv. No. 337-TA-556. ***This exhibit contains confidential information, subject to protective***  
 11 ***order.***

12       9. Attached hereto as Exhibit H is a true and correct copy of the Order denying  
 13 Epistar's Motion for Stay Pending Appeal, issued September 28, 2007, in the action *Epistar*  
 14 *Corp. v. Int'l Trade Comm'n, et al.*, Fed. Cir. No. 2007-1457.

15       10. Attached hereto as Exhibit I is a true and correct copy of Complainant Lumileds  
 16 Lighting U.S., LLC's First Set of Interrogatories to Respondents Epistar Corp. and United  
 17 Epitaxy Co., Ltd., served January 19, 2006, in the ITC's investigation *In the Matter of Certain*  
 18 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-  
 19 556. ***This exhibit contains confidential information, subject to protective order.***

20       11. Attached hereto as Exhibit J is a true and correct copy of Respondent Epistar  
 21 Corporation's Responses to Complainant Lumileds Lighting U.S., LLC's First Set of  
 22 Interrogatories, served January 30, 2006, in the ITC's investigation *In the Matter of Certain High-*  
 23 *Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.  
 24 ***This exhibit contains confidential information, subject to protective order.***

25       12. Attached hereto as Exhibit K is a true and correct copy of Respondent Epistar  
 26 Corporation's Supplemental Responses to Complainant Lumileds Lighting U.S., LLC's First Set  
 27 of Interrogatories, served March 3, 2006, in the ITC's investigation *In the Matter of Certain*  
 28 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-

1 556. ***This exhibit contains confidential information, subject to protective order.***

2 13. Attached hereto as Exhibit L is a true and correct copy of Order No. 2: Issuance of  
 3 Ground Rules, issued December 8, 2005, in the ITC's investigation *In the Matter of Certain*  
 4 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-  
 5 556.

6 14. Attached hereto as Exhibit M is a true and correct copy of the July 11, 2003  
 7 hearing transcript in the action *Lumileds Lighting v. Epistar Corp.*, Nos. C-02-5077 (N.D. Cal.,  
 8 Judge Wilken presiding).

9 I declare under the penalty of perjury under the laws of California and the United States  
 10 that the foregoing is true and correct. Executed this 5th day of June, 2008 in Palo Alto,  
 11 California.

12 Respectfully submitted,

13  
 14 By /s/ Ryan L. Scher  
 15 Ryan L. Scher (State Bar. No. 244706)  
 16 MORGAN, LEWIS & BOCKIUS LLP  
 17 2 Palo Alto Square  
 18 3000 El Camino Real, Suite 700  
 19 Palo Alto, CA 94306  
 20 Telephone: (650)843-4000  
 21 Facsimile: (650)843-40001

22  
 23 Attorney for Defendant and  
 24 Counterclaimant  
 25 PHILIPS LUMILEDS LIGHTING  
 26 COMPANY, LLC  
 27  
 28

**1 ATTESTATION PURSUANT TO GENERAL ORDER 45**

2  
3 I, Michael J. Lyons, am the ECF user whose ID and password are being used to file this  
4 Declaration of Ryan L. Scher In Support of Philips Lumileds' Motion for Judgment on the  
5 Pleadings. In compliance with General Order 45.X.B., I declare under the penalty of perjury  
6 under the laws of the United States of America that Ryan L. Scher has concurred in this filing.

7 Executed this 5th day of June 2008, at Palo Alto, California.

8 \_\_\_\_\_/s/ Michael J. Lyons\_\_\_\_\_.

28

MORGAN, LEWIS &  
BOCKIUS LLP  
ATTORNEYS AT LAW  
PALO ALTO

1-PA/3709370.2

5

DECL. OF RYAN SCHER ISO PHILIPS LUMILEDS'  
MOTION FOR JUDGMENT ON THE PLEADINGS  
(C 07-5194 CW)